

The California Victims of Crime Program

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Introduction

California's Victims of Crime Program (VOC Program) was established in 1965 to help people recover from the traumatic sequelae of victimization due to criminal activity. California thus became the first U.S. state to provide victim assistance; New Zealand and Great Britain had established programs in 1964. The VOC Program established reimbursement for citizens who were victims of violent crime after enactment of the first enabling legislation, Senate Bill (SB) 1057, Chapter 1549 of the Welfare and Institutions Code which stated, in part:

Aid shall be paid under this chapter, upon application, to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime of violence, if there is need of such aid.¹

The legislation further directed the courts to order a defendant to pay a fine commensurate with the offense committed. Payment was to be deposited into an Indemnity Fund — established in the State Treasury — with the proceeds to provide the resources for the aid payments. At that time, the legislation limited the total expenditures for the 1965–1966 fiscal year to not exceed \$100,000, with financing entirely by state and county funds.

Because the legislation was passed as part of the Welfare and Institutions Code, the Department of Social Welfare (Department), through County Welfare Departments, was given administrative responsibility. The Department's established approach to determining welfare eligibility was to "... involve itself in a claimant's personal life." This approach was highly criticized by crime victims. During the first year of operation of the Victims of Crime Program, the Department awarded six recipients a total of only \$4,621 of the \$100,000 allocated for this purpose.²

1967 Transfer of the VOC Program to the State Board of Control

On November 8, 1967, the legislature passed SB 563 (Chapter 1546), transferring responsibility for the administration of the Victims of Crime Program to the State Board of Control (Board). This legislation added a residency requirement, limiting victim of crime indemnification to individuals with California residency. It also established a one-year time limit from the date of the crime for filing a claim. Further, this legislation established that the Attorney General would have verification responsibility for each claim. Cooperation with law enforcement also became mandated and failure to cooperate on the part of a claimant became grounds for denial of a claim.

Additionally, the legislation established a maximum limit of \$5,000 per claim and also established that a claim would be reduced to the extent that the claimant had received indemnification from any other source. At this time attorney fees also were established, with a fee limit of 10% of the claimed amount.

¹ Welfare and Institutions Code, Chapter 1549 (McAteer), Section 1. 1500.02.

² Analysis of SB 562 (McAteer), Legislative Analysts Office, August 2, 1967.

Board of Control — Mental Health Policy and Procedural Changes

The Board of Control is empowered by the legislature to establish policies and create procedures to implement Victims of Crime legislation. Throughout the Program's history, mental health treatment issues have raised numerous challenges.

One of the earlier challenges confronted by the Program occurred as a result of its practice of reimbursing mental health expenses at whatever amount was billed. The Board in November 1986 limited payments to MFCCs and LCSWs to \$80.00 per hour and payments to psychiatrists and psychologists to \$100.00 per hour. In 1989, following extensive public hearings that included discussion of prevailing rates for psychotherapy, the Board further reduced the allowable rates for reimbursement for individual and family therapy to \$70.00 per hour for MFCCs and LCSWs and \$90.00 per hour for psychiatrists and psychologists. At this time, group therapy sessions hours were set at 40% of the provider's maximum individual session rate, up to the newly established maximum individual rates of \$70 and \$90 allowed by the Board. The power of the Board to establish maximum rates and service limitations has since been codified in the law, Government Code Section 13965(9)(j). Since 1989, these rates had remained unchanged. In January 2000, after conducting a survey of current rates for psychotherapy, the Board increased the maximum allowable rates for reimbursement for individual and family therapy to \$90 per hour for Marriage and Family Therapists (MFTs, formerly MFCCs) and LCSWs, \$110 per hour for psychologists, and \$130 per hour for psychiatrists. Group therapy rates remain at 40% of the provider's individual rate up to the maximum rates established for that provider.

During the 1989 public hearings, the issue of the large number of sessions (in some cases in excess of 400 and 500 sessions) that some victims were receiving was addressed. Concerns were raised that victims were either:

- Receiving ineffective treatment, or
- Being treated for symptoms that were unrelated to their victimization.

At that time, the Board established a policy of authorizing mental health therapy in 50-session increments. Mental health verification forms were developed (MH-A and MH-B) requiring completion by treating therapists. Without approval of a completed MH-B by Board staff no further therapy could be authorized.

During the latter part of the 1980s, the Program began to develop a backlog with regard to the timely processing of claims. Although the legislature had mandated an average claims processing time of 90 days, the time to process some claims became three years or more. Additionally, the legislature passed legislation mandating that the turnaround time for supplemental mental health billing (additional bills submitted after a claim met eligibility criteria) was to be an average of 30 days. At one point the total backlog exceeded 20,000 claims.

To reduce the backlog problem, the Program hired additional claims processing staff and directed the claims processing staff to work mandatory overtime. During this time, the Program instituted a number of procedures designed to streamline claims processing. In particular, a process that enabled rapid payment of mental health bills, termed *Preauthorization*, was instituted. Eventually the backlog was eliminated and preauthorized mental health bills today are processed within an approximate average time of three weeks.

In 1994, legislation mandating the Board to develop "... a simplified and expedited procedure for paying claims of a qualified provider of mental health services to children and their families who qualify as victims of crime in need of services"³ became effective. In response to this legislation the Board created *Non-Profit Agreements (NPAs)* that enable certain non-profit community agencies to enter into agreements for expedited bill processing. These agreements enable rapid processing of claims from these providers by reducing the

³ Senate Bill SB 644, Section 13, 13965.3.

amount of initial verification performed on these claims. Claim validity is later substantiated through clinical and fiscal audits of the NPA providers' records.

1969 Addition of Citizens Benefiting the Public

In 1969, the legislature passed the Citizens Benefiting the Public law, often referred to as the *Good Samaritan Act* (SB 368, Chapter 1111, Article 2). The law states, in part:

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, benefits the public. In recognition of the public purpose served, the state may indemnify such citizens, their widows, and their surviving children in appropriate cases for any injury, death or damage sustained by such citizens, their widows or their surviving children as a direct consequence of such meritorious action to the extent that they are not compensated for the injury, death, or damage from any other source.⁴

This Good Samaritan law limited these claims to a maximum of \$5,000.

1974 Legislative Changes

Passage of SB 149, Chapter 1144, effective on July 1, 1974 expanded the definition of victim to include any individual "... who voluntarily pays the medical or burial expenses incurred as a direct result"⁵ of a death caused by a crime of violence.

Acts involving the operation of motorized vehicles were *excluded* from coverage, with the specified exceptions of acts where the injury or death was intentionally inflicted through the use of a motor vehicle, aircraft or water vehicle; or for injury or death sustained in an accident caused by a driver in violation of Section 20001 (Hit and Run) or 23101, 23102 or 23106 (Driving Under the Influence).

Minimum loss criteria were established which stated that the "loss shall be in an amount of more than one hundred (\$100) or shall be equal to 20 percent or more of the victim's net monthly income, whichever is less."⁶

It became possible for the Board to grant an extension beyond the one-year deadline for filing a claim if the victim could show *good cause*. Also introduced were categorical dollar limits. The Board could take one or all of the following actions:

- Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical related expenses directly resulting from the injury but not to exceed ten thousand dollars (\$10,000):
- Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury, but not to exceed ten thousand dollars (\$10,000);
- Authorize cash payments not to exceed three thousand dollars (\$3,000) to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.⁷

⁴ Senate Bill 368, Chapter 1111, Section 3, Article 2, Citizens Benefiting the Public.

⁵ Senate Bill, 149, Chapter 1144, Section 2, Article 1, 13960(a)(3).

⁶ Ibid. (d).

⁷ Ibid., 13965(a).

This legislation charged every local law enforcement agency with the *duty to inform* victims of violent crime of the pertinent provisions of the law and to provide application forms to victims desiring assistance. Also, every licensed hospital was charged to give notification of the Program's existence by prominently displaying posters in their emergency rooms. Additionally, the law declared that anyone who suffered injury or death as a result of knowingly or willingly participating in the commission of the crime would be ineligible for assistance. Capping of attorney fees was clarified to be either 10% of the amount of the award or five hundred dollars (\$500), whichever was less.

1978 Legislative Changes

SB 83, Chapter 521 expanded Program coverage of vehicular crimes to include victims of the crime of Driving under the Influence of Drugs, as well as injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime of violence in which the driver knowingly and willingly participated.

Additionally, the law stated that an application may be denied, in whole or in part, if such denial was appropriate because of the nature of the victim's involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application.

SB 1032, Chapter 636 addressed the need for victims to cooperate with the Program in order to verify their claimed losses and mandated that:

The victim shall cooperate with the staff of the State Board of Control in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.⁸

SB 724, Chapter 1122 removed a previous requirement that a victim show financial hardship in order to qualify for assistance.

1980 Legislative Changes

SB 1737, Chapter 1375 expanded the definition of victim to include persons who suffer emotional injury. In order to find that the victim incurred an *emotional injury*, it must also be shown that the victim sustained physical injury or *threat* of physical injury.

Further, psychiatric or psychological expenses were included within the meaning of pecuniary loss. Also included within the meaning of pecuniary loss, was the amount of medical or medical related expense which may include psychological or psychiatric expenses incurred by any person whose treatment or presence during treatment of the victim was medically required for the successful treatment of the victim.

Included among those who could be considered a victim was any member of the family of a victim or any person in close relationship to a victim, if such member was present during the actual commission of the crime.

AB 203, Chapter 1370 added a benefit of a \$1,000 emergency award for a victim of a crime of violence.

1983 Legislative Changes

AB 1485 (Sher) established continuous appropriation of restitution funds to the Board, eliminating the need to submit a budget for the award fund each fiscal year. It renamed the Indemnity Fund the Restitution Fund effective January 1, 1984.

⁸ Senate Bill 1032, Chapter 636, Section 2, 13962 (c).

SB 1084 and 1085 (Petrus) effective January 1, 1984, changed Victims of Violent Crime to Victims of Crime Program and combined the previous maximum dollar award categories of \$10,000, \$10,000 and \$3,000 for medical, wage and rehabilitation to allow a maximum award of \$23,000 based on any combination of losses. It authorized Emergency Awards for medical treatment and required the Board to process claims within 90 days after verification.

1984 Legislative Changes

AB 2075 (Vicencia) provided that any individual who sustained an emotional injury as a result of being a victim of certain crimes, as specified, should be presumed to have suffered a physical injury.

1985 Legislative Changes

AB 537, Chapter 29 increased the maximum cash payment to \$46,000, if federal funds are available.

1986 Legislative Changes

AB 590, Chapter 713 added non-residents injured in California. It also added \$23,000 for medical or medical-related expenses only for victims injured during 1985 (excludes psychological or psychiatric treatment).

1987 Legislative Changes

SB 1477, Chapter 1357 added Penal Code 288a to the list of crimes for emotional injury. It also created a limit of \$10,000 for medical or mental health counseling expenses for a family member of a victim who incurred emotional injury, and also added \$23,000 for minor victims of sexual assaults for applications filed on or before 12/1/82.

1989 Legislative Changes

AB 2811, Chapter 254 excluded felons from the definition of victim until discharged from probation or released from correctional institution and discharged from parole. It limited payment of “felon” claims until discharged from probation or released from correctional institution and discharged from parole.

1990 Legislative Changes

SB 395, Chapter 1202 added an additional \$10,000 for sexual assault victims for crimes occurring after 1/1/80 if the victim made two or more court appearances involving the defendant.

1993 Legislative Changes

Since the inception of the Program, passage of SB 644 has been, perhaps, the most impactful legislation to affect the Program. This legislation redefined covered crimes, types of victims, payment caps and eligibility.

Victim remained defined as the person who incurs injury, but all other eligible claimants were redefined as *derivative victims*. Further, derivative victims were limited to California residents and covered four sub-groupings:

- Parent, sibling, spouse or child of the victim at the time of the crime.
- Living with the victim at the time of the crime.
- Lived with the victim previously for two years in a relationship similar to that of a parent, sibling, spouse or child.
- Another family member, including fiancé(e) who witnessed the crime.

The definition of a crime was altered to a crime or offense that would constitute a misdemeanor or felony if committed by a competent adult. The definition further qualified that a crime could be "... one act or series of related acts arising from the same course of conduct" by the same perpetrator(s). It also added crimes involving any vehicles where the operator is under the influence of alcohol or drugs, including the operation of aircraft and water vehicles.

Pecuniary loss was defined to mean medical or medically related expenses incurred by a victim, including inpatient mental health services. Outpatient mental health counseling was given a separate category. Mental health counseling expenses provided for family treatment were allowed for the successful treatment of the victim, even if the individual was not a family member at the time of the crime.

Good cause applications were limited to three (3) years after the date of the crime or two (2) years after the age of 19 (for a crime against a minor).

Benefits for outpatient mental health counseling were limited to:

- \$10,000 for the victim.
- \$10,000 for the surviving parent, sibling, spouse, child or fiancé(e) of a victim who died as a result of a crime.
- A total of \$10,000 for not more than 2 derivative victims who were the primary caretakers of child victims of sexual or physical abuse at the time of the crime.
- \$3,000 for other derivative victims.

To avert the sudden and potentially traumatizing termination of outpatient mental health treatment, additional counseling expenses were permitted for persons who already had been receiving treatment.

Wage losses were limited to up to 2 years following the crime or 3 years if disability prevented rehabilitation.

Support losses were allowed for a derivative victim who was legally dependent on the victim at the time of the crime. Adults were limited to not more than 2 years, or 3 years after the death of a victim. Minors could continue to receive benefits up to age 18. The maximum limit for all derivative victims combined for support losses was \$46,000.

For "dire or exceptional circumstances" the Board was permitted to allow reimbursements for outpatient mental health counseling in excess of the newly established \$10,000 or \$3,000 limits. This statute also mandated that the Board create a simplified and expedited process for paying claims involving mental health services to children and their families, when rendered by "qualified providers" who have certain agreements with the Board.

1998 Legislative Changes

AB 535, Chapter 697 became effective September 22, 1998. This law added a new derivative victim category to the program. The new primary caretaker of a minor victim who assumes that role after the crime also became eligible as a derivative victim. This category of derivative victim may only be reimbursed for outpatient mental health counseling, with a total maximum limit of \$3,000, provided that the treatment is necessary for the treatment of the victim.

AB 535 also required the Board to adopt domestic violence guidelines that allow the Board to consider and approve applications for assistance based upon domestic violence, taking into account the following:

- Victim's age
- Victim's physical condition

- Victim's psychological state
- Any compelling health or safety reason

This includes, but is not limited to, evaluating the degree of cooperation the victim is capable of providing to law enforcement when there is a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family.

1999 Legislative Changes

Effective January 1, 1999, psychology interns providing mental health services to crime victims became eligible for VOC reimbursement under the following circumstances:

- A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) in a university hospital or university medical school clinic, or
- A person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral training in a university or university medical school clinic under the supervision of a licensed mental health professional for the purpose of achieving higher clinical competency.

2000 Legislative Changes

AB 606, Chapter 584 established that the Board, in cases of death or severe trauma, would conduct a pilot program that would reimburse a victim or derivative victim for grief, mourning and bereavement services provided by Child Life Specialists. The Child Life Specialist must be certified by the National Child Life Council to have at least five years experience in the field of child life, as defined by the Council. These services must be performed under the supervision of a court, a hospital, physician or surgeon, licensed psychotherapist, community-based organization, or county. The Board was directed to make a report by January 31, 2003, to the legislature that would include conclusions and recommendations as to whether the Child Life Specialist should be licensed by a state agency. The pilot program shall end January 1, 2004.

2001 Legislative Changes

Effective January 1, 2001, AB 2491, Chapter 1016, to better describe the services the governing agency of the VOC Program provides, changed the name from the State Board of Control to the California Victim Compensation and Government Claims Board (CVCGCB).

Additionally, the total maximum amount payable to a victim or derivative victim for one crime was increased from \$46,000 to \$70,000 (mental health category limits, however, were not increased and remained the same).

AB 2491 also appropriated \$1,000,000 from the Restitution Fund for the CVCGCB to enter into an interagency agreement with the University of California at San Francisco. The purpose of this funding is to establish a victim's recovery center at San Francisco General Hospital to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime.

